

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

ANDREW PERRONG, individually and on
behalf of a class of all persons and entities
similarly situated,

Plaintiff,

vs.

FRONTIER UTILITIES NORTHEAST LLC
and NEXT GENERATION ENERGY, INC.,

Defendants.

Case No. 2:20-cv-05844-MSG

**PLAINTIFF’S MOTION FOR LEAVE TO FILE INSTANTER REPLY IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF A CLASS ACTION SETTLEMENT**

Pursuant to Section 10 of the Court’s Policies and Procedures, Plaintiff hereby requests leave to file instanter a reply in support of his Motion for Preliminary Approval of a Class Action Settlement.

A reply is necessary to rebut an issue or factual assertion not covered by the Plaintiff’s original submission, namely, Defendant Frontier Utilities Northeast LLC’s (“Frontier’s”) argument that the Settlement Agreement it negotiated with the assistance of counsel and freely executed is now void.

At the time Plaintiff filed his Motion for Preliminary Approval of a Class Action Settlement, Plaintiff was uncertain as to whether Frontier would attempt to oppose the Motion, as it would be a breach of the parties’ Settlement Agreement for it to do so. Frontier represented in Section 7.1.1 of the Settlement Agreement that it would not attempt to frustrate or back out of the parties’ Settlement Agreement by opposing certification of the Settlement Class:

**Frontier agrees not to contest certification of the Settlement
Class, but specifically disputes that a class would otherwise be**

manageable in the Actions and denies that a litigation class properly could be certified on the claims asserted in the Actions. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Frontier does not oppose and hereby agrees to certification of the Settlement Class for settlement purposes only, pursuant to Fed. R. Civ. P. 23(b)(3).

(Doc. 15-1 at § 7.1.1 (emphasis added).) In connection with making this promise, Frontier represented that prior to signing the Settlement Agreement, it had a full and fair opportunity to evaluate the strengths and weaknesses of its position with respect to class certification:

This Settlement Agreement is the result of good faith, arm's-length settlement negotiations that took place only after the Parties engaged in motion practice and discovery in the *Frey* Action and in an action filed by Andrew Perrong before the Pennsylvania Public Utilities Commission. The Parties have exchanged information through discovery, have participated in mediation under the guidance of mediator Hon. Morton Denlow from JAMS, **and have had a full and fair opportunity to evaluate the strengths and weaknesses of their respective positions.**

(*Id.* at p. 2, Recitals ¶ E (emphasis added).)

Then, two weeks after it executed the Settlement Agreement and just days before Plaintiff's Motion for Preliminary Approval was due to be submitted to the Court, for reasons unknown, Frontier's counsel decided to do a public records search of one of the Plaintiffs' names on PACER and learned about an alleged weakness in that particular Plaintiff's case that Frontier could have but failed to research before it executed the Settlement Agreement—that Jon Frey, the plaintiff in another action subject to the Settlement Agreement, is currently facing felony criminal charges in this Court.

Frontier now points the finger at Plaintiffs' counsel and the Plaintiffs themselves, accusing them all of committing fraud on Frontier. In fairness, Plaintiff should be permitted to

respond to Frontier's accusations. As explained in the proposed reply brief attached as Exhibit A, they are meritless.

Respectfully submitted,

/s/ Joseph F. Murray

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

/s/ Joseph F. Murray

Joseph F. Murray